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09/582,556 08/22/00 VAN ASSELT

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EXAMINER

ARYANPOUR, M

ART UNIT

PAPER NUMBER

3711

DATE MAILED:

10/18/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

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Office Action Summary

Application No.
09/582,556

Applicant(s)
Jan Abraham Van Asselt

Examiner
Mitra Aryanpour

Art Unit
3711



-- The MAILING DATE of this communication appears on the cover sheet with the corresponding address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Aug 22, 2000
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 35 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirements.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☒ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☒ All b) ☐ Some* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- *See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- 15) ☒ Notice of References Cited (PTO-892) 18) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 19) ☐ Notice of Informal Patent Application (PTO-152)
- 17) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 2 20) ☐ Other: _____

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DETAILED ACTION

Specification

1. This application does not contain an abstract of the disclosure as required by 37 CFR 1.72(b).

An abstract on a separate sheet is required.

2. The disclosure is objected to because of the following informalities: "base ball" is one word.

Appropriate correction is required.

Claim Objections

3. Claims 11, 13, 15, 16, 18, 19, 22, 23 and 25 are objected to under 37 CFR 1.75(c) as being in improper form.

In the preliminary amendment dated 6/29/00, request was been made to change claims 3-10 "any one of the preceding claims" to read --claim 1-. However, claim 5, is dependent on claims 1 to 3 and there is no reference to the aforementioned and claim 10, is dependent on claim 9.

The aforementioned also appears in claims 11,13, 15, 16, 18 and 19. Is it applicant's intention to leave these claims as they appear, or to also change language?

claim 5, is dependent on claims 1 to 3; claim 23, is dependent on claims 20 to 22 and claim 25, is dependent on claims 20 to 24 these are not an acceptable multiple dependent claim.

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Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 1-27 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claims 6, 13, 14, 17, 22, 23, 24, 25, the phrase "and/or" renders the claim(s) indefinite because the claim(s) include(s) elements not actually disclosed (those encompassed by "or the like"), thereby rendering the scope of the claim(s) unascertainable. See MPEP § 2173.05(d).

Regarding claim 22, the phrase "or the like" renders the claim(s) indefinite because the claim(s) include(s) elements not actually disclosed (those encompassed by "or the like"), thereby rendering the scope of the claim(s) unascertainable. See MPEP § 2173.05(d).

6. Claim 27 rejected under 35 U.S.C. 112, second paragraph, as being indefinite in that it fails to point out what is included or excluded by the claim language. This claim is an omnibus type claim.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that

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the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1, 3, 4, 6-12, 16-20, 22, 25, 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Janis (4,138,107)** in view of **Scher et al (5,713,805)** or in the alternative **Ring (5,460,364)**.

Janis shows an apparatus for use in playing and practicing ball games comprising upper and lower guide ways (10 and 12), reciprocating means (14) connected to and freely moveable along said upper and lower guide ways (10 and 12), and a ball (16) connected to the reciprocating means (14).

(See figure 1); the upper and lower guide ways are substantially parallel, and lie in a plane which is generally normal to the ground (see figure 1).

Janis does ^{not} show the reciprocating means to be substantially inelastic; ~~or in the alternative:~~

Scher et al shows a baseball practice device wherein the reciprocating means can be either made of elastic or non-elastic material (see claims 10 and 11).

Ring also shows a ball batting practice apparatus, wherein the reciprocating means (30) can be fabricated from elastic (for weak hitters or younger players) or non-elastic (for strong hitters) materials (column 4, lines 4-11).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have substituted the elastic reciprocating means of Janis with a substantially inelastic reciprocating means as it is claimed by Scher et al and described by Ring in order to accommodate ^{and} ~~the~~ meet the strength of various players.

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Janis further shows the upper and/or lower guide ways (10 and 12) are attached to a stable support (column 2, lines 32-34); the stable support is preferably a ceiling; the lower guide way (12) is adjustably engaged with the ground (column 2, line 34); the reciprocating means (14) can be made of one continuous line (figure 5) or a combination of two separate lines (figure 2) connected to the ball; the reciprocating means is connected to the upper and lower guide ways means through a slide (see figures 3 and 7), wherein the slide comprises a hook (column 3, lines 10-11).

Janis further shows the upper and lower guide ways are made of a substantially rigid material (column 1, lines 52-58), wherein the guide ways form a track and are capable of receiving a runner (see figures 1-7).

However, Janis does not indicate whether or not the guide ways are made of plastic. To use a well known rigid material such as plastic is considered to be an obvious material choice.

9. Claims 13 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art, as applied to claims 1 and 20 and further in view of **Lingbeek (3,630,521)**.

Janis does not disclose if the upper and lower guide ways are made of low friction material.

Lingbeek shows a practice device, wherein the upper and lower guide ways are made of low friction material.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided a low friction guide for the device of Janis as shown by Lingbeek, so that the ball assembly can slide more efficiently on the guides.

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10. Claims 2, 5, 14, 15, 21 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art, as applied to claims 1 and 20 and further in view of ~~Albert~~ [✓] (3,086,775).

Janis does not show the upper guide way to be inclined. However, applicant has demonstrated no criticality as to why the upper guide way is inclined.

Albert shows a practice device, wherein the rate of approach of the ball (25) to the player can be adjusted by varying the slope^o in the line (8).
^

One of ordinary skill in the art at the time the invention was made would have secured the upper guide way of Janis in any suitable way including at an angle as shown by Albert in order to increase the rate of approach of the ball.

Janis further shows the maximum height of the upper guide way above ground level being greater than the length of the reciprocating means (column 3, lines 18-24).

Janis does not disclose if the upper and lower guide ways are made of plastics covered cord or wire.

Albert shows further shows the practice device wherein the upper guide way is made of a plastic covered line (column 1, lines 62-66); and the reciprocating means (23) is also partially covered by a plastic sleeve (30).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided a plastic cover for the device of Janis such as the one described by Albert in order to protect the guide and/or reciprocating means from damage due to repetitive use.

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Conclusion


11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mitra Aryanpour whose telephone number is (703) 308-3550. The examiner can normally be reached on Monday through Friday from 8:30 am to 5:00 pm. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-7768.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.

MA

October 15, 2001

JEANETTE CHAPMAN
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